

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.28811 of 2017

Gram Panchayat of Village Bhatola

....Petitioner

Versus

State of Haryana and others

.....Respondents

AND

CWP No.3976 of 2019

Kishan Lal

....Petitioner

Versus

State of Haryana and others

.....Respondents

Date of Decision: 10.07.2020

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Ram Bilas Gupta, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana,
for the respondents.

KARAMJIT SINGH, J.

This judgment, being passed in CWP No.28811 of 2017, 'Gram Panchayat of Village Bhatola versus State of Haryana and others', shall, besides this writ petition, also dispose of, CWP No.3976 of 2019, 'Kishan Lal versus State of Haryana and others', as both these petitions involve common questions of law and fact. By way of the present writ petitions, the petitioners seek to invoke jurisdiction of this Court under Article 226/227 of the Constitution of India, for quashing of the impugned notification dated 14.08.2008 (Annexure

B-2) issued under Section 4 of the Land Acquisition Act (hereinafter referred to

as 'the Act'), notification dated 30.08.2008 (Annexure P-3) issued under Section 6 of the Act, Award dated 27.08.2010 (Annexure P-5) and Agreement dated 30.10.2017 (Annexure P-8)

The brief facts of each case are as follows:-

CWP No.28811 of 2017

The petitioner-Gram Panchayat was owner of the land comprised in Mustkil No.4, Killa No.8(2-7), 13(7-4), 14(0-10), 16(0-6), 17(5-18), 18(8-0), 24 Min(4-0), 25 Min(1-17), Mustkil No.9, Killa No.17(0-4), 18 Min(2-7), 23 Min(2-0), 24(4-3), Mustkil No.24, Killa No.18 Min(4-0), 19/1 Min(1-0), 22/3 (2-0), Mustkil No.24, Killa No.23/1(4-0), 119(4-17), 120 Min(0-11), 122 Min (0-13) and still in physical possession of land comprised in Mustkil No.4, Killa No.8(2-7), 13(7-4), 24 Min(4-0), 25 Min(1-17), situated in the revenue estate of village Bhatola, Tehsil and District, Faridabad. The said land was reserved for common use of the inhabitants of the village. The Government issued notification dated 14.08.2008 (Annexure P-2) for acquisition of land measuring 1189.98 acres, including the aforesaid land of the petitioner, under Section 4 of the Act. No opportunity was given to the petitioner to file objections under Section 5A of the Act. The notification (Annexure P-3) under Section 6 of the Act was issued on 30.08.2008 and finally Award dated 27.08.2010 (Annexure P-5) was passed, without following the proper procedure. It was pleaded that some other land owners challenged the notification issued under Section 6 read with Section 7 of the Act and the Hon'ble High Court quashed the notification dated 30.08.2008 issued under Section 6 of the Act and the said land owners were given opportunity to file objections under Section 5A of the Act against the proposed acquisition within 30 days, vide order dated 27.05.2011

(Annexure P-6). Thereafter, respondent Nos.1 to 3 issued fresh notification dated 01.03.2012 under Section 6 of the Act and the fresh Award No.10 dated 09.08.2012 was passed. The land in question was acquired by the Government only for the development and utilization of land for master plan roads of Sectors 75 to 89, Faridabad. The said development plan has already been executed. The acquired land of the petitioner remains un-utilized and is not required by the respondents for any public purpose. Rather, some of the said un-utilized land comprised in Mustkil No.4, Killa No.8 and 13 has been given on lease by the Government to M/s Harpyari Devi Welfare Society, New Delhi, vide agreement dated 30.10.2017, for commercial purpose. The petitioner has also come to know that the respondents have exchanged some of the aforesaid un-utilized land with M/s Indian S.L.F Infrastructure, Greater Kailash Part-II, New Delhi. The petitioner has sought the quashing of notifications (Annexures P-2 and P-3) and Award (Annexure P-5) qua the un-utilized land of the petitioner with the request that the same be released from the acquisition.

CWP No.3976 of 2019

The petitioner was owner of the land comprised in Rectangle No.57, Killa No.18(6-14), 23/1(1-6) and 13(8-0) to the extent of 1/3rd share, situated in the revenue estate of village Baselwa, Tehsil and District, Faridabad. The Government issued notification dated 14.08.2008 (Annexure P-2) for acquisition of land measuring 1189.98 acres, including the aforesaid land of the petitioner, under Section 4 of the Act. No opportunity was given to the petitioner to file objections under Section 5A of the Act. The notification (Annexure P-3) under Section 6 of the Act was issued on 30.08.2008 and finally Award dated 27.08.2010 (Annexure P-5) was passed, without following

the proper procedure. It was pleaded that some other land owners challenged the notification issued under Section 6 read with Section 7 of the Act and the Hon'ble High Court quashed the notification dated 30.08.2008 issued under Section 6 of the Act and the said land owners were given opportunity to file objections under Section 5A of the Act against the proposed acquisition within 30 days, vide order dated 27.05.2011 (Annexure P-6). Thereafter, respondent Nos.1 to 3 issued fresh notification dated 01.03.2012 under Section 6 of the Act and the fresh Award No.10 dated 09.08.2012 was passed. The land in question was acquired by the Government only for the development and utilization of land for master plan roads of Sectors 75 to 89, Faridabad. The said development plan has already been executed. The acquired land of the petitioner remains un-utilized and is not required by the respondents for any public purpose. Rather, some of the said un-utilized land comprised in Mustkil No.4, Killa No.8 and 13 has been given on lease by the respondents to M/s Harpyari Devi Welfare Society, New Delhi, vide agreement dated 30.10.2017, for commercial purpose. The petitioner has also come to know that the respondents have exchanged some of the aforesaid un-utilized land with M/s Indian S.L.F Infrastructure, Greater Kailash Part-II, New Delhi. The petitioner has sought the quashing of notifications (Annexures P-2 and P-3) and Award (Annexure P-5) qua the un-utilized land of the petitioner with the request that the same be released from the acquisition.

The writ petitions were contested by the respondents. Respondent No.1 to 3 filed written statement, in which, it was admitted that the land of the petitioner was acquired, vide Award dated 27.08.2010, on the basis of the notifications dated 14.08.2008 (Annexure P-2) and dated 30.08.2008

(Annexure P-3), issued under Sections 4 and 6 of the Act, respectively. It was pleaded that possession of the acquired land was already handed over to the Estate Officer, HUDA and the compensation was paid to the land owners. The land in question was acquired keeping in view the future plan. It was denied that the land was acquired to help the private colonizer or respondent No.5. It was further pleaded that the challenge to the acquisition proceedings suffers from latches. It was prayed that both the writ petitions be dismissed.

We have heard learned counsel for the parties and also gone through the record, carefully.

The admitted facts are that the Urban Estate Department issued notification under Section 4 read with Section 17 of the Act on 14.08.2008 to acquire the land, including the land of the petitioners, for public purpose, namely, for the development and utilization of land for master plan roads of Sectors 75 to 89, Faridabad, as per development plan of Faridabad. Subsequently, declaration under Section 6 of the Act dated 30.08.2008 was issued. Finally, Award dated 27.08.2010 was passed. The compensation of acquired land has already been paid to the petitioners. As per the respondents, the possession of the acquired land has already been handed over to the Estate Officer.

The petitioners never challenged the above-said acquisition proceedings prior to the filing of the present writ petitions. There is no dispute regarding the fact that some other land owners challenged notifications issued under Sections 4 and 6 of the Act, on the ground that they were deprived of filing the objections under Section 5A of the Act. The said challenge was allowed by the Hon'ble High Court, vide order dated 27.05.2011. Notification

dated 30.08.2008 issued under Section 6 of the Act was quashed qua the land owners, who had challenged the same and direction was given to them to file objections under Section 5A of the Act against the proposed acquisition within 30 days. On the basis of the said order, the Land Acquisition Collector proceeded further in the matter and passed fresh Award dated 09.08.2012 qua the land belonging to the said land owners. One of the land owners, namely, M/s Kataria Construction Private Limited challenged the said proceedings by filing CWP No.16085 of 2012 (O&M) but the same was dismissed on 05.11.2015.

The petitioners have sought release of their un-utilized land on the ground that the land was acquired just to help the private builders. To substantiate his contention, learned counsel for the petitioners relied upon **Mohan Singh Gill and others Vs. State of Punjab and others, 2015(2) R.C.R.(Civil) 705 (S.C)**, wherein, the land was acquired for construction of Missing Link-II. The acquisition was challenged. The Hon'ble Apex Court set aside the notifications to the extent of acquisition of land over and above, which was needed for construction of Missing Link-II, being bad in law. Learned counsel for the petitioners also placed reliance upon **Patasi Devi Vs. State of Haryana and others, 2013(1) R.C.R.(Civil) 536 (S.C.)**, wherein, the request made by the petitioner for release of her land was accepted on the ground that the State Government had misused the provisions of Sections 4 and 6 of the Act for making land available to a private developer. Learned counsel for the petitioners also referred to **M/s Royal Orchid Hotels Limited and another Vs. G. Jayarama Reddy and others, 2011(4) R.C.R.(Civil) 613 (SC)**, wherein, the land acquired by the Government for public purpose was

transferred to private persons for house building project and, thus, the Hon'ble Apex Court held that it amounted to fraud on the power of eminent domain and the land was ordered to be restored to the land owners. Reliance was also placed on **CWP No.15231 of 2013** titled **Puneet Kumar and others Vs. State of Haryana and others** decided on 18.07.2013 by this Court.

However, petitioners have failed to produce any document to substantiate their contention. The petitioners cannot take any benefit of agreement dated 30.10.2017 alleged to be executed between M/s Harpyari Devi Welfare Society, New Delhi and HUDA, Faridabad, whose copy has been placed as Annexure P-8 in CWP No.28811 of 2017. From the perusal of Annexure P-8, it appears that certain area has been given to the aforesaid Society for the purpose of playground of school and the ownership, control and supervision of the said area will remain in the hands of HUDA. From Annexure P-8, it cannot be made out that the un-utilized acquired land has been given to some private builders for commercial use. We are of the view that the aforesaid case law is not of any help to advance the cause of the petitioners. The petitioners have failed to prove that it was colourable exercise of power to acquire land to help the private builders or to help any private Society.

Learned counsel for the petitioners while referring to **State of Haryana and another Vs. Mani Devi, 2012(3) R.C.R.(Civil) 514** submitted that as in the present case, the possession of the acquired land was not taken till date, the State cannot now be permitted to utilize the land for so called public purpose in equity. It is also contended on behalf of the petitioners that their claim is not suffering from delay and latches. In this context, learned counsel for the petitioners referred to **Lajja Ram and others Vs. Union Territory,**

Chandigarh and others, 2014(1) R.C.R.(Civil) 641, wherein, Hon'ble Apex Court while dealing with land acquisition matter held that delay *ipso facto* should not be put against the appellants and their case must be decided on merits. Reliance was also placed on **Kailash Wati through L.Rs and another Vs. State of Haryana and others, 2010(3) R.C.R.(Civil) 668**, wherein, this Court directed release of land even though, said release was claimed after a huge delay of 17 years. We are of the view that the relief claimed by the petitioners is suffering from delay. The notifications under Sections 4 and 6 of the Act were issued in 2008 and the impugned Award was passed on 27.08.2010. It has been admitted by the petitioners that they have already received the compensation with regard to their acquired land from the Government and they have also sought enhanced compensation. As per the respondents, possession of the acquired land was taken over by the Government at the time of passing of the Award.

Recently, the Hon'ble Apex Court in **Indore Development Authority Vs. Manohar Lal and others, 2020(5) Scale 34**, has held that once possession is taken and the Award has been passed, the land vests in State. It cannot be divested, even if, there is some irregularity in acquisition proceedings. The Hon'ble Apex Court also observed that the provisions of Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'Act of 2013'), cannot be applied to acquisitions made under the Act of 1894.

In *Indore Development Authority* (supra), the Hon'ble Apex Court while interpreting the provisions of Section 24(2) of the Act of 2013 held that, in case, compensation has been paid, possession has not been taken, then, there

is no lapse. Similarly, in case, possession has been taken, compensation has not been paid, then, also there is no lapse. In the present case, petitioners had admitted the payment of compensation. So, the case of the petitioners is not covered even under Section 24(2) of the Act of 2013.

In the light of the above, we are of the view that the claim of the petitioners for release of their un-utilized land is untenable and deserves to be declined.

Consequently, both the writ petitions are hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

10.07.2020

adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No